



CABLEVISION SYSTEMS CORP.
FCC MEETINGS MARCH 11-12, 2008

Cablevision provides state-of-the-art telecommunications services throughout its New York, New Jersey and Connecticut service area with its Optimum suite of services.

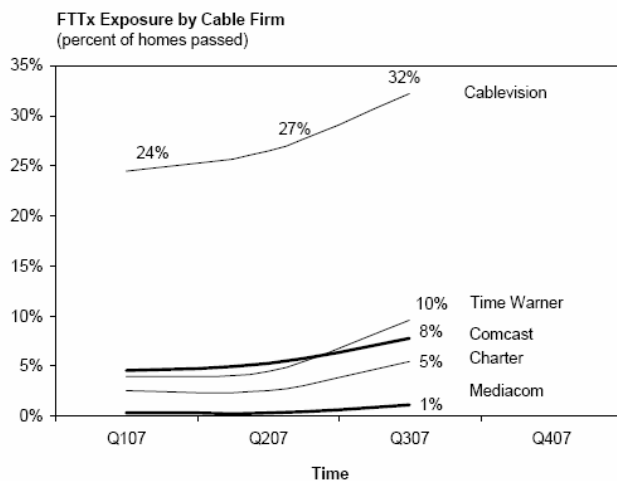
- iO Digital Cable Television
- Optimum Online high-speed broadband Internet access
- Optimum Voice
- Optimum Lightpath

Cablevision leads the industry nationally in the provision of advanced communication services. Of the 4.68 million homes we pass in our service area, Cablevision has:

- 3.1 million video customers, of which more than 80% are digital customers
- 2.28 million high speed broadband customers; representing more than 48% of homes passed.
- More than 1.5 million voice customers, representing 34% of homes passed.

Cablevision faces more sustained investment in competitive cable, telephone and broadband services than any other operator in the country:

Figure 1. Fiber Exposure by Cable Firm Over Time (percent of homes passed)



Source: Citi Investment Research

Figure 2. FTTx Exposure by Cable Firm (000s of homes; percent)

	Total Homes Passed	FiOS Homes	U-Verse Homes	Total FTTx Homes	Percent of Homes with FiOS	Percent of Homes with U-Verse	Percent of Homes with FTTx
Comcast	47,500	2,291	1,388	3,679	4.8%	2.9%	7.7%
Time Warner	26,062	970	1,539	2,509	3.7%	5.9%	9.6%
Cox	13,200	706	322	1,027	5.3%	2.4%	7.8%
Charter	11,852	286	354	640	2.4%	3.0%	5.4%
Cablevision	4,862	1,392	76	1,468	30.5%	1.7%	32.2%
Mediacom	2,829	30	-	30	1.1%	0.0%	1.1%
Other	8,995	619	63	682	6.9%	0.7%	7.6%
Total	115,000	6,292	3,742	10,034	5.5%	3.3%	8.7%

Source: Citi Investment Research; Company reports; U.S. Census; U.S. Postal Service; TV Guide



Competition policy should reflect the substantial market changes in Cablevision's three-state, 4.4M household footprint:

1. The Commission grant timely Cablevision's outstanding petitions for findings of "effective competition."

Congress established a mechanism to relieve cable operators of undue regulatory burdens whenever competition was sufficient to supplant regulation as the primary driver of innovation and market discipline. Cablevision is facing more competition from AT&T and Verizon and satellite than any other operator in the country, and has pending with the Commission 175 petitions for a determination that, in various franchises, it faces "effective competition."

- Cablevision has 27 petitions for effective competition pending before the Commission, covering 175 communities, filed in late 2006, 2007, and early 2008.
- The petitions covering 150 of these communities are based in whole or in part on Bell entry, a simple and non-controversial showing that the Bell operating company is marketing competing cable services in the franchise area.
- Of the DBS-based petitions, 9 have been pending more than 1 year and 14 have been pending since September 2007.
- Since 2004, the FCC has granted petitions covering 68 of Cablevision's communities.

Cablevision's ability to coordinate pricing, simplify marketing, and respond timely to competitive pressures is handicapped by the continued disparate regulation in New York, New Jersey and Connecticut. (Further, ongoing rate investigations in New Jersey continue to consume time and resources, even though these investigations are effectively moot as of the date of filing of the petitions in each of the 98 New Jersey communities where effective competition petitions are pending.)

Consistent with the Commission's own policy, the Commission should grant Cablevision's effective competition filings

2. Program Access Rule should sunset immediately in markets where it is no longer necessary to create a competitive market.

c)(5) SUNSET PROVISION.--The prohibition required by paragraph (2)(D) shall cease to be effective 10 years after the date of enactment of this section, unless the Commission finds, in a proceeding conducted during the last year of such 10-year period, that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

The FCC's NPRM invites comment whether to permit the prohibition to sunset early in markets where competition is robust. A national snapshot of "cable competition" fails to adequately address the differences in the level of competitive investment in discrete markets. Overbroad application of the

exclusivity prohibition harms competition and distorts the market in ways not contemplated by section 628.

Sharing Arrangements Viewed Skeptically. See, e.g., *Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko, LLP*, 124 S. Ct. 872, 879 (2004) ("Compelling . . . firms to share the source of their advantage is in some tension with the underlying purpose of antitrust law, since it may lessen the incentive for the monopolist, the rival, or both to invest in those economically beneficial facilities."); *AT&T Corp.*, 525 U.S. at 428-29 (Breyer, J., concurring in part and dissenting in part) ("a sharing requirement may diminish the original owner's incentive to keep up or to improve the property by depriving the owner of the fruits of value-creating investment, research, or labor"); *id.* at 429 ("Nor can one guarantee that firms will undertake the investment necessary to produce complex technological innovations knowing that any competitive advantage deriving from those innovations will be dissipated by the sharing requirement."); *Orson, Inc. v. Miramax Film Corp.*, 79 F.3d 1358 (3d Cir. 1996) (allowing exclusivity has procompetitive benefits, including preventing free-riding).

"Necessary" standard is exacting. See *AT&T Corp.*, 525 U.S. at 388-90; *GTE Serv. Corp.*, 205 F.3d at 422 (rejecting the FCC's attempt to interpret "necessary" broadly in Section 251(c)(6) of the Act to mean "used or useful" as "overly broad and disconnected from the statutory purpose"); *Morris Commc'ns Corp. v. PGA Tour, Inc.*, 364 F.3d 1288, 1294 (11th Cir. 2004) ("In order for a practice to be exclusionary, it must harm the competitive process and thereby harm consumers. ") (internal quotation marks, brackets and citations omitted). These cases construe use of the term "necessary" in section 251 of the act, but there is a "natural presumption that identical words used in different parts of the same act are intended to have the same meaning." *Atl. Cleaners & Dyers v. U.S.*, 286 U.S. 427 (1932); *Sullivan v. Stroop*, 496 U.S. 478, 484 (1990); *Gen. Dynamics Land Sys. v. Cline*, 540 U.S. 581, 582 (2004).

Must be related to "competition," not "competitors." It is well established that harm to competitors does not equal harm to competition. See, e.g., *Spanish Broad. Sys. of Fla., Inc. v. Clear Channel Commc'ns, Inc.*, 376 F.3d 1065, 1071 (11th Cir. 2005) ("To have an anticompetitive effect, conduct must harm the competitive process and thereby harm consumers. Harm to one or many competitors will not suffice.") (internal quotation marks and brackets omitted); *Applications of Pacific Telesis Group, Transferor and SBC Communications, Transferee*, 12 FCC Rcd 2624, ¶ 48 (1997) (Commission's "priority is to promote efficient competition, not to protect competitors").

Sharing obligations must be applied on a discrete, granular level. See, e.g., *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, 18 FCC Rcd. 16978, -r 118 (2003) ("Triennial Review Order") (citing *United States Telecom Ass'n v. FCC*, 290 F.3d 415, 422 (D.C. Cir. 2002) ("USTA F")) (subsequent history omitted); *Unbundled Access to Network Elements*, WC Docket No. 04-313, 20 FCC Rcd. 2533, -r 8 (2005) ("Triennial Review Remand Order") (noting *USTA I* rejected national sharing obligations because they were "insufficiently granular" and "did not account for differences in particular markets and particular customer classes"), *aff'd Covad Commc'ns Co. v. FCC*, 450 F.3d. 528, 544

3. The Commission must refrain from extending the program access rules to programming services that are beyond the scope of the statute.

Section 628 applies the exclusivity ban only to programming that is "satellite delivered." Both the Commission and the Courts have held that the program access rules *cannot* be extended to programming that is delivered terrestrially pursuant to a legitimate business arrangement. Congress considered whether to extend the ban to terrestrial programming, and declined.

As the Commission itself has noted: "[T]he legislative history of Section 628 ... indicates that the version of the program access provision that the Senate adopted would have extended to terrestrially-



delivered programming services but the House bill, that was eventually adopted, did not. This indicates a specific intention to limit the scope of the provision to satellite services." *2007 Extension Order and NPRM at ¶ 116.*